

# **EXHIBIT D**

**Redacted Version of Document Sought to  
be Sealed**

## Independent Developers Publishing Program on Xbox One Title Licensing Agreement

This Title Licensing Agreement (“**TLA**”) is entered into and effective as of May 8, 2017, between Microsoft Corporation, a Washington corporation (“**Microsoft**”) and Epic Games, Inc. (“**You**” or “**Your**”). This TLA describes the terms and conditions of self-publishing the Xbox One version of Fortnite (the “**Game**”) via the Independent Developers Publishing Program (“**ID@Xbox**”) on Xbox One and making the Game available for purchase via the Xbox Games Store. You should review the entire TLA, including any terms provided in the Publisher Guide, and the attached Game Schedule, because together these terms create this binding TLA. As used herein, “Xbox One” includes Xbox One, Xbox One S, Xbox One Scorpio and their successors and variants.

You and Microsoft agree as follows:

**1. Xbox Development Kit and Developer Account.** Xbox One development kits (each an “**XDK**”) are licensed to You under the terms of the XDK License Agreement between You and Microsoft for the relevant territory (“**XDK License**”). Microsoft retains title and ownership of the XDK. Prior to execution of XDK License and creation of Your developer account Microsoft may verify contact, financial and other information You submit. You must be in good financial standing, continue to comply with the terms of the XDK License and this TLA and You are responsible for all activity that takes place with Your developer account. Your developer account allows You access to the “**Xbox Developer Portal**,” which hosts important policies, guidelines and publishing requirements.

**2. Game Approval, Certification and Release.** The standard approval process for the Game is described below and in the Publisher Guide.

**2.1 Concept.** You will submit a completed Game Information Form describing the proposed Game and indicating the countries where You grant Xbox Games Store the right to sell the Game. If You want to host (or have a third party host) any online Game features, then You or Your third party host must comply with Partner Hosting Services requirements (more info below). Microsoft will notify You whether the Game concept is approved. Adherence to the approved Game Information Form is required for Certification.

**2.2 Final Certification.** You will submit the proposed final-release version of the Game that is complete and ready for access and distribution via the Xbox Games Store. Your Game must have a final content rating for each release region. Microsoft will conduct compliance, compatibility, functional, and other testing to determine the Game’s compliance with “**Certification Requirements**” (which are the specific technical requirements Your Game must meet) and will provide You with the testing results, including any fixes required to pass Certification. Release from Certification requires: (1) passing Certification Testing; (2) conforming with the approved Game concept; (3) providing any other materials required by the Publisher Guide; and (4) ongoing compliance with all Certification Requirements and other required categories in the Publisher Guide, including approval of “**Marketing Materials**” (which are press releases, marketing, advertising, or promotional materials).

**2.3 Content rating.** In order to enter Certification, the Game must obtain a rating of “Mature (17+)” (or its equivalent) or lower (i.e., more broadly appropriate) from appropriate rating bodies in the regions You intend to ship in, including any independent content rating authority(ies) that Microsoft may reasonably designate (e.g., ESRB, PEGI). You will include such rating(s) prominently on Marketing Materials, as per the applicable rating body’s guidelines, and will include such rating(s) in a header file or the manifest of the Game. If, after commercial release, Microsoft or a ratings body determines that a Game is suitable for adults only or is indecent, obscene, or illegal, the Game will no longer be available via the Xbox Games Store.

**2.4 Localization.** All Games will be localized by You as required by local regulation (if applicable) and to the same extent to meet game parity requirements in Section 2.5.

**2.5 Game parity.** The Game is subject to the following requirements:

**2.5.1 Features and content parity.** The Game will have at least the same features and content as any corresponding Console Platform version of the Game, including all hardware feature updates (e.g., HDR), localization, subscriptions, and pack-in content.

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**2.6 Publisher Guide.** Microsoft has developed a guide containing ID@Xbox program-wide requirements and information (as updated by Microsoft, the “**Publisher Guide**”), including Xbox Requirements, Branding Specifications, marketing guidelines, Xbox Games Store policy, any applicable packaging requirements, and other information regarding other operational aspects of Xbox One and Xbox Live (each, as set forth or defined in the Publisher Guide). Each Game must comply with the Publisher Guide. On publication of a supplement, revision, or updated version of the Publisher Guide, You and the Game will automatically be bound by all provisions.

### **3. Post-release compliance.**

**3.1 Bugs or errors.** All Games must remain in compliance with all Certification requirements in the Publisher Guide. Nothing in this TLA relieves You of the obligation to correct material bugs and errors in Games whenever discovered (including after commercial release) in a mutually-agreed manner (which may be via a Game update). Microsoft reserves the right to charge a reasonable amount to cover additional Certification costs if re-Certification is required. Microsoft will provide You with advance notice of what the reasonable re-Certification costs are and under what circumstances the costs may be assessed.

**3.2 No reverse engineering.** You will not, directly or indirectly (including by aiding a third party to), Reverse Engineer all or any component of Xbox One, including hardware, software, or firmware, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. “**Reverse Engineer**” means: (1) x-ray electronic scanning or physical or chemical stripping of semiconductor components, including the motherboard for Xbox One; or (2) disassembling, decompiling, sniffing, using logic analyzers or electrical probes, or replacing physical components of Xbox One to derive source code. This Section 3.2 does not amend or supersede Section 3.4 of the XDK License between You and Microsoft.

**3.3 Minimum Commitment.** You will make the Game and any Online Game Feature related to consuming the Game, available via Xbox Live for at least 18 months following commercial release. You will provide necessary customer support for such Online Game Feature during its availability and for 6 months after discontinuation.



**3.4 Disablement.** Microsoft may disable or remove any Game from Xbox Live or on Xbox One consoles, immediately and at any time, if Microsoft determines that: (1) You have breached this TLA; (2) You have terminated this TLA; (3) the Game fails to comply with applicable documentation, the approved Concept, or other aspects of this TLA; (4) the Game materially deviates from the version passing Certification or materially fails to perform as originally intended; (5) the Game is causing harm to (or is likely to harm) the Xbox One console, third-party networks, users, or otherwise (e.g., due to piracy, security breach or security defects, or technical failure); or (6) the Game is damaging (or is likely to) damage Microsoft's reputation, involve Microsoft in public controversy, or subject Microsoft to liability.

**4. Marketing, support, and promotion.**

**4.1 Marketing.** As between the parties, You are solely responsible for marketing the Game outside of the Xbox Games Store, and Microsoft is solely responsible and has sole discretion for marketing on Xbox Games Store and/or Microsoft sites. This section does not prohibit You from purchasing advertising for the Game on Microsoft's advertising platforms (including the Xbox Games Store).

**4.2 Support.** You are solely responsible for providing technical and all other support relating to the Game. You will provide all appropriate contact information (including address and the applicable individual/group responsible for customer support) and shall also provide all such information to Microsoft for posting on <http://www.xbox.com>.

**4.3 Promotion.** You grant Microsoft a fully-paid, royalty-free, non-exclusive license to: (1) publicly perform and publicly display the Game at conventions, events, trade shows, press briefings, public interactive displays, and the like; and (2) use the title of, and screen shots from, the Game in advertising and promotional material related to Xbox One and other Microsoft products and services. The parties may, from time to time, discuss additional, possible marketing and promotion. Nothing in this TLA, however, will preclude Microsoft from using screen shots, Marketing Materials, etc. as permitted by law without a license (e.g., "fair use" under applicable copyright law or "referential" use under trademark law). Microsoft may use the code from the Game for internal compatibility and testing to ensure that the Game operates correctly on Xbox One and Xbox Live.

**4.4 Samples.** You will provide Microsoft with 1,000 royalty-free samples of the Game for Microsoft's use in testing, marketing and promotion efforts.

**5. Game Content and Your Responsibilities**

**5.1 Sale of In-Game Content.** You may sell in-Game content and You must use Microsoft's commerce engine. All purchases made through Your Game are subject to the terms of this TLA and the Xbox Game Store policies.

**5.2 Representations and Warranties.**

**5.2.1** You are responsible for Game content including any names, trademarks, logos, icons, titles, product descriptions and screenshots You provide to us. If You discover that Your Game violates the terms of this TLA, You must immediately notify us and work with us to repair the Game; although Microsoft reserves the right to remove the Game from Xbox Games Store. If Microsoft receives a complaint from a third party requesting that the Game be changed or removed, Microsoft will contact You and, as appropriate, You must comply with the notice as soon as reasonably practicable, together with any other requirements in Microsoft's Notice and Takedown policies at <http://go.microsoft.com/fwlink/p/?LinkID=224390>.

**5.2.2** You are also warranting that listing and distribution of Your Game in the Xbox Games Store does not and will not violate any Agreements to which You are a party or of which You are otherwise aware, and does not and will not misappropriate or infringe the intellectual property or proprietary rights of any third party.

**5.2.3** If Your Game includes free and open source software (any software licensed under an Open Source Initiative Approved License, “FOSS”), it must not infringe or misappropriate any intellectual property or personal right of any third party. You must comply with all applicable FOSS licensing terms, including obtaining Commercial Pass-through license(s) and any source availability requirements, and You must not cause any Microsoft software to become subject to the terms of any FOSS license. If, at any time, Microsoft determines that You are not in compliance with this Section 5.2.3, Microsoft reserves the right to remove the Game from the Xbox Games Store.

**5.2.4** You will obtain and maintain all necessary rights, clearances and consents, and pay all performance, licensing and reuse fees, including any consideration associated with providing music or video related content in and through Your Game.

**5.3 Game License Rights.** In consideration of royalties payable under Section 8, You grant Microsoft a worldwide, transferable, sublicensable license to: (1) broadcast, transmit, distribute, host, publicly perform and publicly display, reproduce, stream, and store the Game; and (2) distribute to Xbox Live users, and permit Xbox Live users to download and store the Game and recordings of gameplay. The licenses in this Section 5.3 are exclusive (i.e., except as expressly permitted under this TLA, You will not directly or indirectly permit or enable access to the Game by any means, methods, platforms, or services other than through Xbox Live). Notwithstanding the foregoing, this Section 5.3 does not prevent You from making other platform versions of the Game available via other platform-specific online services.

**5.4 License to Users.** Microsoft will license the right to install and use each Game to users. You may create a license agreement to govern Your relationship with users with regard to the Game (a “EULA”). If You elect to bind users to a EULA, Your EULA must: (1) to the maximum extent allowed by applicable law, disclaim any warranties, limit liability, and exclude damages on behalf of Microsoft and its affiliates, either by category (e.g., by a reference to “Your licensors”) or by name; (2) disclaim any obligation on the part of Microsoft or its affiliates to provide support or other services; (3) not prevent or limit access to the Game (however, a EULA may be required to access the Game’s Online Game Features) ; and (4) not purport to govern or change, in any way, the user’s relationship with Microsoft under Microsoft’s applicable agreements with such user, including the Xbox Live terms of use.

**5.5 Gameplay record and share feature.** The Xbox One gameplay record and share feature is a system feature of Xbox One that allows users to record their gameplay experiences and publish the recorded gameplay to share with third parties via Microsoft and third-party video sharing sites and services. If the Game enables the gameplay record and share feature, You grant Microsoft a fully-paid, royalty-free, non-exclusive, perpetual license to, solely as part of the gameplay record and share feature: (1) record portions of the Game gameplay; (2) copy, archive, host, and have hosted such recordings; (3) create derivative works of such recordings (including by application of various compression and streaming technologies); (4) publicly perform, publicly display, and stream such recordings; and (5) grant to third parties the right to view such recordings.

**5.6 Gameplay streaming features.** The Xbox One streaming features are Xbox One system features that allow users to share and access their gameplay experiences with Microsoft and third-party applications and services. The licenses granted in this Section 5.6 are sublicensable to Microsoft’s affiliates, third-party contractors, and users.

**5.6.1 Gameplay streaming feature.** Unless the streaming feature is disabled and subject to Section 2.5, You grant Microsoft a fully-paid, royalty-free, non-exclusive, perpetual license to, solely as part of the gameplay streaming feature: broadcast, transmit, distribute, host, publicly perform and publicly display, reproduce, and stream gameplay of a Game with Microsoft and third-party applications and services.



**5.6.2 Gameplay streaming and remote access feature.** Unless the streaming and remote access feature is disabled and subject to Section 2.5, You grant Microsoft a fully-paid, royalty-free, non-exclusive, perpetual license to, solely as part of the gameplay streaming and remote access feature: (a) broadcast, transmit, distribute, host, publicly perform and publicly display, reproduce, and streaming gameplay of the Game and (b) provide use, access and control of the gameplay of the Game on any platform or service on which Xbox Live is offered. Any Xbox Live cloud-based streaming game subscription and/or rental service is exempted from the obligations of this Section 5.6.2.

**5.7 [Intentionally Omitted].**

**5.8 Game Usage data.** The operation of Xbox Live requires Microsoft to collect and store Xbox Live user usage data, including statistics, scores, ratings, and rankings (collectively, “**Xbox Live User Data**”), as well as personally-identifiable Xbox Live User data (e.g., name, email address) (“**Personal Data**”). Microsoft may, in its discretion, use such Xbox Live User Data for any purpose, including posting the Xbox Live User Data on Xbox.com or other Microsoft websites. Your Game may not collect Personal Data without obtaining user consent. If You collect Personal Data, then You may not disclose any Personal Data to, or share any Personal Data with, any third party (without express user consent), and in any permitted email communications with Xbox Live users, You must include instructions for opting out of receiving any further communications from You.

**5.9 Compliance with Laws.** Your Game and Marketing Materials must comply with the laws of each territory or country into which You request distribution of the Game. This includes: (i) data protection, privacy and other laws and regulations relating to collection and use of user information by Your Game (ii) telecommunications laws and (iii) content ratings regulations. If You are required to make any disclosures to consumers prior to sale or download of the Game, You must provide those in the Game description field in the Xbox Developer Portal. Those may include Your full contact information, notice that a Game supports in-Game purchases, or other disclosures. You must make such notices sufficiently prominent as is required by local law. Your Game must not require further export, import or technology control licensing from any government. You must disclose to us any controlled technology employed, used or supported by Your Game. You may not use the Xbox Games Store or any services or tools made available for the development of Games for any illegal activity. We must expressly consent to any collection by Your Game of Xbox Live user’s Personal Data and in such event, You may collect only what Personal Data that is legitimately necessary for the intended purpose and may not use any such Personal Data relating to the Xbox One and the Xbox Live service in any manner outside of Your Game without express user consent.

**5.10 Branding Specifications.** You will incorporate Licensed Trademarks (defined in Section 6), and include credit and acknowledge Microsoft as required by the Branding Specifications (in the Publisher Guide). You will not use Licensed Trademarks with third-party trademarks in a manner that might suggest co-branding or otherwise create confusion as to source or sponsorship of the Game and Marketing Materials or ownership of Licensed Trademarks, unless Microsoft has approved such use in writing.

**6. Licensed Trademarks.** Your use of licensed trademarks, identified in the Publisher Guide as Microsoft trademarks (“**Licensed Trademarks**”) must comply with the Publisher Guide. Microsoft grants You a non-exclusive, non-transferable, personal license to use Licensed Trademarks solely in connection with marketing. You are granted no right, and will not purport to permit any third party, to use Licensed Trademarks in any manner without Microsoft’s prior written consent. You will not contest the validity of, by act or omission jeopardize, or take any action inconsistent with, Microsoft’s rights or goodwill in Licensed Trademarks in any country, including attempted registration of any Licensed Trademark, or use or attempted registration of any mark confusingly similar to any Licensed Trademark.

**7. Hosting Requirements.** If You elect to provide a “**Publisher Companion Experience**,” (which is an internet website or an application, e.g. a web portal or mobile application) through which players of the Game can access certain content, including Online Game Features, hosted and served through Your hosting services or 3<sup>rd</sup> party hosting services (“**Hosted Content**”), then, as between the Parties, You will provide all customer support and technical support to Xbox Live users. The Publisher Companion Experience will contain certain game data information related to the Game. Microsoft has no support responsibilities whatsoever to Xbox Live users for the Publisher Companion Experience.

**7.1 Hosting Service requirements.** You will comply, and on Microsoft’s request, provide Microsoft with sufficient information to verify Your compliance, with the following:

**7.1.1 Standards.** You will host the Hosted Content and provide services, each in a manner that meets or exceeds standards of quality, performance, stability, and security generally accepted in the industry, as well as specific requirements in Section 7 and the Publisher Guide.

**7.1.2 Operation.** You will monitor the operation and performance of Your hosting services; respond to technical and Xbox Live user inquiries; and have rules, policies, and procedures for Your hosting services.

**7.1.3 Reporting and technical policies.** You will use the communication processes stated in the Publisher Guide for updating Microsoft’s technical teams. In addition, You will comply with the technical processes, policies, rules, and detailed procedures.

**7.1.4 Server capacity and load.** You will use commercially reasonable efforts to support all Xbox Live users using Your hosting services, including operating sufficient computing resources for traffic.

**7.1.5 Uptime.** You will operate Your hosting services to 99.5% Uptime per month. “**Uptime**” means the portion of time when the system is accessible and available to Xbox Live users; Uptime is calculated monthly assuming conformance with the industry standard of monitoring every five minutes. You will report uptime statistics to Microsoft on request.

**7.1.6 Troubleshooting and notice to Xbox Live Users.** If the hosting services or the Publisher Companion Experience are unable to connect to and properly interoperate with Xbox Live, You will diligently work with Microsoft (subject to the availability of Microsoft resources, in Microsoft’s discretion) to troubleshoot the problem, and You will diligently work to fix any such problem. If a Game is unable to access the hosting services, then You must display the appropriate message to the Xbox Live user in accordance with the Publisher Guide.

**7.2 Xbox Live family settings features.** The hosting services, Hosted Content, and Publisher Companion Experience will at all times comply with the Xbox Requirements related to the family settings features of Xbox One and Xbox Live.

**7.3 Xbox Live User Generated Content.**

**7.3.1 Microsoft approval.** You may not allow users to create, share, or otherwise provide user generated content in connection with the Game without first obtaining Microsoft’s express, written approval. You must provide Microsoft a detailed description of the process and procedures You will have in place regarding such user generated content at least 90 days prior to Game commercial release, and the Game must comply with any Xbox Requirements related to the creation and/or consumption of user generated content.

**7.3.2 Infringement.** If Microsoft has approved You to make user generated content available as part of Hosted Content, then You will maintain a procedure, that complies with applicable law, for removing this content in the event of an infringement claim; and You will remove allegedly infringing content, no later



than 48 hours after receipt of a third party claim or notice from Microsoft. Further details available in the Publisher Guide.

**7.3.3 Violations of Xbox Live terms of use or code of conduct.** Microsoft may, in its discretion, require You to remove user generated content for user violations of the Xbox Live terms of use, Xbox Live Code of Conduct, or both.

**7.4 Third Party Host of Hosting Services.** Subject to Microsoft's advance consent, You may subcontract to a 3<sup>rd</sup> party host all or any portion of Your rights or obligations with regard to providing hosting services only. All actions and failures to act of any 3<sup>rd</sup> party host engaged by You are imputed to, and deemed to be Your actions or failures to act. You may provide the 3<sup>rd</sup> party host with access to only those portions of Xbox Live services that are necessary to perform hosting services, and to no other portions. You unconditionally and irrevocably guarantee 3<sup>rd</sup> party host's performance of the applicable obligations imposed by this TLA and the XDK License Agreement; You will indemnify and hold Microsoft harmless from all damages or costs of any kind incurred by Microsoft or any third party and arising from or related to 3<sup>rd</sup> party host's fulfillment of, or failure to fulfill, the applicable obligations of You; and You will make all payments to 3<sup>rd</sup> party host for services performed, and for any other services or deliverables.

**8. Payment Terms.** You will submit Your Game to Microsoft for distribution via the Xbox Games Store. You will set the wholesale price ("**WSP**"). WSP means the highest per-unit price that You intend to charge Microsoft, as retailer. Microsoft may choose to offer the Game for sale in currency or via currency stored value ("**CSV**"). The rates, values, and policies applicable to use of CSV are available in the Publisher Guide. "**CSV Remittance Rate**" means the rate used calculate the Royalty Fee for purchases made with CSV. The CSV Remittance Rate is currently 3.2% (see Publisher Guide for additional detail). For Games for which Microsoft receives payment, Microsoft will pay You a royalty fee as per Section 8.1 ("**Royalty Fee**").

**8.1 Royalty Fee.** Microsoft will pay You a royalty percentage as follows:

**8.1.1 Non-CSV purchases.** For non-CSV purchases of the Game, Online Game Content, or content distributed for "free," the Royalty Fee will equal the greater of (i) the wholesale price or (ii) 70% of the actual price for such item. The wholesale and actual prices do not include any pass-through taxes such as sale, use, and/or VAT/GST that are ordinarily collected from Xbox Live users whether or not those taxes are displayed to Xbox Live users.

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**8.2 Payment.** Within 45 days after the end of each month, or more frequently, Microsoft will provide You with access to a statement and release payment for any Royalty Fees due. In the event Royalty Fees are less than \$200 for a given month, then no payment will be made until such Royalty Fees accrued exceeds \$200. The statement will contain information sufficient to discern how the Royalty Fees were computed. You have 90 days after the statement date to dispute the information presented on the statement.

**8.3 Xbox Live billing, collection, and Hosting Services.** Microsoft has the sole right to bill and collect all fees associated with Xbox Live for which Xbox Live users may be charged, which amounts will be in Microsoft's discretion. As between You and Microsoft, Microsoft will solely offer, host, fulfill and deliver the Game and Online Game Features, and any other Xbox One-related content or services to Xbox Live users, except as follows. You may host (and have hosted on Your behalf) multiplayer functionality and server-hosted content



and services necessary for online game modes, and other such content and services approved by Microsoft for the Game.

**8.4 Offsets.** Microsoft reserves the right to adjust Your Royalty Fee payment amount to reflect offsets for: (1) amounts uncollectable (e.g., canceled credit card payments, invalid credit card accounts); and (2) any return(s) as set forth in this TLA. Microsoft may elect to accept returns from users in accordance with the terms of sale provided via the Microsoft Services Agreement. Unless You have provided Your prior written approval, however, or the parties otherwise agree to a higher cap amount, the total returns that can be netted out of the Royalty Fee calculation will not exceed 1% of the total number of units sold in any quarter. For any returns accepted by Microsoft, Microsoft will revoke the digital content license associated with the applicable end user's Xbox Live account. Note that any revocation of digital content license in accordance with Section 3.4 is excluded from the 1% cap referenced above. Upon written notice to You (email shall suffice), Microsoft shall have the right to offset amounts due to You in the event You fail to pay Microsoft any amounts due under the TLA.

**8.5 [Intentionally Omitted].**

**8.6 Taxes.** Neither party is liable for any of the other party's taxes that the other is legally obligated to pay and that are incurred or arise in connection with or related to transactions under this TLA, and all such taxes (including net income or gross receipts taxes, franchise taxes, property taxes, or taxes arising from sales between a party and its subscribers or customers) are the financial responsibility of the party legally obligated to pay such tax. A party may provide to the other a valid exemption certificate in which case that other party will not collect taxes covered by such certificate. If any taxes must be withheld on payments made by one party to the other, the paying party will deduct such taxes from the amount otherwise owed and pay them to the appropriate taxing authority. The paying party will secure and deliver to the other an official receipt for those withholdings and other documents reasonably requested by the other to claim a foreign tax credit or refund. The parties will use reasonable efforts to ensure that any taxes withheld are minimized to the extent possible under applicable law. This Section 8.6 will govern the treatment of all taxes as a result of, or connected with, this TLA.

**8.7 Audit.** You and Microsoft will keep all usual and proper records related to its performance under the TLA for three years from the date the record was created. Either party ("**Auditing Party**") may, on 60 business days' notice, cause a mutually agreed upon third-party independent CPA or law firm (such agreement not to be unreasonably withheld) to audit or inspect the other party's ("**Audited Party**") records no more than once in any 12 consecutive month period to verify compliance with the financial, royalty, and payment terms of this TLA. Auditing Party will have access to the previous three years of Audited Party's records from the date that the audit request notice was received by Audited Party. The right of inspection and consultation will expire with respect to all records related to any amounts payable under this TLA on the 3<sup>rd</sup> anniversary of the date of the statement or payment to which such records relate. Any such audit will be conducted during regular business hours at Audited Party's offices and will be paid for by Auditing Party, unless Material Discrepancies are disclosed. If Material Discrepancies are disclosed, Audited Party will pay Auditing Party for the costs associated with the audit, as well as reimburse Auditing Party for all under-reported amounts, plus interest at a rate of 12% per annum. "**Material Discrepancy**" means 10% of the amounts due to Auditing Party within the audit period (net of any overpayments that may have occurred during such audit period). If there is no Material Discrepancy disclosed, then the Auditing Party pays all costs involved with the audit.

**9. Additional Terms.**

**9.1 Disclaimer of warranty.** Microsoft provides all materials (including XDK, the Xbox Games Store, Xbox Live) as-is, "with all faults," and "as available." You bear the risk of using the materials and the Xbox Developer Portal. To the extent permitted by local law, Microsoft excludes any implied warranties or conditions, including those of product liability, merchantability, fitness for a particular purpose, workmanlike effort, and non-infringement, relating to the materials and Xbox Developer Portal.

**9.2 Limitation of liability.** Except for amounts owed under this TLA, the maximum liability of Microsoft to You or any third party relating to this TLA will be \$10,000. Furthermore, under no circumstances will Microsoft be liable to You for any damages whatsoever with respect to any claims relating to the Microsoft security technology or its effect on any Game or for any statements or claims made by You, whether in Your Marketing Materials or otherwise, regarding the availability or operation of any Game.

**9.3 Duty to defend.** You will defend, indemnify and hold harmless Microsoft and its subsidiaries from and against (including by paying associated any costs, losses, damages or expenses and attorneys' fees) any and all third party claims: (i) that Your Game infringes any proprietary or personal right of a third party; (ii) alleging Your breach of the TLA, (iii) relating to the use of or inability to use the Game (to the extent such claim is not caused directly from the acts or omissions of Microsoft), including any product liability claims. Microsoft will notify You promptly in writing of the claim and, at Your reasonable request, provide You with reasonable assistance in defending the claim. You will reimburse Microsoft for any reasonable out-of-pocket expenses incurred in providing that assistance. You will not make any settlement or compromise of a claim, or admit or stipulate any fault or liability on Microsoft part with respect to any claim covered by this section without Microsoft's express, prior written consent.

**9.4 Choice of Law and Venue.** This TLA is governed by the laws of Washington State. You irrevocably consent to the exclusive jurisdiction and venue of the courts in King County, Washington.

**9.5 Limitation on Claims.** To the maximum extent permitted by local law, any claim related to this TLA or to the Microsoft materials must be filed within two years of the claimant first becoming aware of the claim. If it is not filed within that time, then the claim is permanently barred.

**9.6 No Waiver.** A party's failure to enforce any rights under this TLA will not be deemed a waiver of the same right on another occasion, or of the right to enforce any other right under this TLA. Microsoft's decision to make a Game available on the Xbox Games Store will not be deemed a waiver of any rights Microsoft may have under this TLA, including for violations of the Certification Requirements or other content related terms.

**9.7 Confidentiality; publicity.** The most recent generally applicable Non-Disclosure Agreement (NDA) executed by You and Microsoft will apply to all Confidential Information provided by the parties under this TLA or the XDK License (regardless of any earlier termination or expiration of the NDA). Except if otherwise stated in this TLA, neither party will communicate with the press or public about their relationship under, or use the other's name connected to, this TLA, without the other's express, prior, written consent.

**9.8 Assignment.** Microsoft may assign this TLA (or any rights or duties under it) at any time. You may not assign this TLA or any rights or duties under it without the written consent of Microsoft.

**9.9 Relationship.** Each party is an independent contractor to the other and has no authority to act on behalf of or bind the other, and this TLA does not create any other relationship (e.g., employment, partnership, or agency).

**10. Term.** The term of this TLA is 3 years beginning with the Effective Date and will automatically renew each year as long as the Game remains available via the Xbox Game Store and Xbox Live. However, if the Game does not release on Xbox Games Store by 3 years after the Effective Date, then Microsoft may immediately



terminate this TLA. Either party can give notice of termination with 60 days' notice or if either party materially breaches the TLA, the non-breaching party may terminate within 30 days' of notice of the breach unless such breach is cured within the notice period. Post-termination, including termination for breach, Microsoft will keep a copy of the Game unless a court orders us to delete it because of copyright infringement to support re-downloads to an Xbox Live user, to back up and restore, or other technical reasons. When Your Game is no longer available via the Xbox Games Store, You must return all Microsoft materials, including any XDKs, unless otherwise approved in writing by Microsoft. When this TLA terminates, You must return all Microsoft materials, including any XDKs, unless otherwise approved in writing by Microsoft.

By signing this TLA, You represent and warrant to us that You have the authority to accept this TLA, You are at least 18 years of age, the information You provide under this TLA is true and correct, and You agree to be bound by its terms.

**Agreed and accepted:**

Microsoft Corporation	Epic Games, Inc.
DocuSigned by: Signature: Christopher Charla DA5704FA38D7457...	DocuSigned by: Signature: Joseph M. Wilbur C48F5283A50947C...
Name: christopher charla	Name: Joseph M. Wilbur
Title: Director, ID@Xbox	Title: VP Business Affairs
Date: 5/10/2017	Date: 5/10/2017

**Independent Developers Publishing Program on Xbox One  
Title Licensing Agreement**

**SCHEDULE A**

**GAME SCHEDULE – FORTNITE**

This Schedule A ("Game Schedule") is part of and subject to the Title Licensing Agreement dated May 8, 2017, between the parties. This Game Schedule shall be effective upon the last signature date below.

<b>Game:</b>	As used in this Game Schedule, "Game" means Fortnite.
<div>Redacted</div>	
<b>User Generated Content / Approved Exception</b>	Microsoft agrees that the features of the Game that permit users to build in-game structures are approved as required by Section 7.3 of the TLA, provided that You comply with all other obligations of Section 7.3.



<b>Third Party Host of Hosting Services</b>	Microsoft agrees that You may use 3 <sup>rd</sup> parties to host all or any portion of Your rights or obligations with regard to providing hosting services as required by Section 7.4 of the TLA, provided that you comply with all other obligations of Section 7.4.
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In the event of a conflict or inconsistency between the TLA and this Game Schedule, this Game Schedule shall prevail.

**Agreed and accepted:**

<b>Microsoft Corporation</b>	<b>Epic Games, Inc.</b>
Signature: <i>Christopher Charla</i> <small>DocuSigned by: DA5704FA38D7457...</small>	Signature: <i>Joseph M. Wilbur</i> <small>DocuSigned by: C48F5283A50947C...</small>
Name: Christopher Charla	Name: Joseph M. Wilbur
Title: Director, ID@Xbox	Title: VP Business Affairs
Date: 5/10/2017	Date: 5/10/2017